IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

FAO.No. 280 of 2006()

AS.286/2006 of ADDL. DISTRICT COURT, PARAVUR
OS.360/2000 of MUNSIFF COURT, PARAVUR
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APPELLANTS/APPELLANTS/PLAINTIFFS.
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1. DHARMARTHA DAYINI SABHA, (DD SABHA), KARIMPADAM, CHENDAMANGALAM VILLAGE, PARUR TALUK, REPRESENTED BY ITS PRESIDENT P.K.SATHYAN.

2. P.K.SATHYAN, S/O.KUTTAN, AGED 66, PERUMTHODATH HOUSE, THEKKUMPURAM, CHENDAMANGALAM VILLAGE, PARUR TALUK, PRESIDENT, DHARMARTHA DAYINI SABHA, KARIMPADAM, CHENDAMANGALAM.

3. T.K.SALIM, S/O.VIJAYAN, AGED 53, THARAYIL HOUSE, KARIMPADAM, CHENDAMANGALAM VILLAGE PARAVUR TALUK, SECRETARY, DHARMARTHA DAYINI SABHA, KARIMPADAM, CHENDAMANGALAM VILLAGE.

BY ADV. SRI.T.K.VENUGOPALAN
SRI.SHIBU JOSEPH

RESPONDENTS: RESPONDENTS/DEFENDANTS:
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1. K.MANOHARAN, SON OF CHENNUKUTTY, AGED 58, KUTTIKKATTU HOUSE, MANAKKODAM KARA, CHENDAMANGALAM VILLAGE, PARUR TALUK.

2. K.K. SATHEESAN, SON OF KESAVAN, AGED ABOUT 58, KALATHUNKAL HOUSE, KARIMPADAM, CHENGAMANGALAM VILLAGE, PARAVUR TALUK.

3. V.P. KUNJAPPAN, S/O. PERAMAN, VELLAPPILLY VEEDU, KARIMPADAM, CHENNAMANGALAM.

4. K.T. PRADEEP, KANAKKANCHERRY, THEKKUMPURAM.

5. C.D. UNNIKRISHNAN,
CHEKKUMARASSERY, THEKKUMPURAM.

6. LISHA,
CHAKKUMARASSERY, THEKKUMPURAM.

7. M.P. SARANGAN,
MANATHARA, THEKKUMPURAM.

8. MANI K.N.,
KOLLAMVEEDU, THEKKUMPURAM.

9. DR. JANARDHANAN,
PRASANTHY, THEKKUMPURAM.

10. SIVADASAN,
K.R. KATTIPURAMBIL, THEKKUMPURAM.

11. C.S. SANTHOSH,
CHERULLIPARAMBA, THEKKUMPURAM.

12. K.G. SURESH,
POTTASSERY, THEKKUMPURAM.

13. VINODHKUMAR O.P.,
OLIYATH, THEKKUMPURAM.

14. C.S. BAIJU,
CHIRAPPURATH, THEKKUMPURAM.

15. V.K. HARIDAS,
VALIYAPARAMBIL, THEKKUMPURAM.

16. DHINESAN P.R.,
POTTASSERY, THEKKUMPURAM.

17. SYAMALA GOPALAKRISHNAN,
NEDIYARA, THEKKUMPURAM.

18. VASUMATHI SATHYAN,
PERUMTHODATH, THEKKUMPURAM.

19. MANI MADHAVAN,
VADHYARUPRAMBIL, THEKKUMPURAM.

20. K.P. SHERINKUMAR,
KOOTTUNAGAL, THEKKUMPURAM.

21. PATTABHIRAMAN,
KOOTUMAGAL, THEKKUMPURAM.

22. M.P. RAJAN,
MANGADANKATTIL, THEKKUMPURAM.

23. LATHA SUDHI,

KANDATHIL, THEKKUMPURAM.

24. LEELA GOPINATH,
KUNNUKATTIL, MANAKKODAM, THEKKUMPURAM.

25. SATHEESH K.G.,
KUNNUKATTIL, THEKKUMPURAM.

26. K.A. JOSHI,
KANNAMPARAMBIL, MANAKKODAM, KARIMPADAM.

27. C.P. LALAN,
CHOOLAKKAL, KARIMPADAM.

28. VISWAMBARAN,
KOOTTUMGAL, THEKKUMPURAM.

29. RADADHAS,
MARAYIL, THEKKUMPURAM.

30. SUNIL K.B.,
KALATHIL, THEKKUMPURAM.

31. JAYAPPAN K.B.,
KALATHIPARAMBIL, THEKKUMPURAM.

32. RATHEESH K.A.,
KALATHIPARAMBIL, THEKKUMPURAM.

33. SANTHOSH K.O.,
KALATHIPRAMBIL, THEKKUMPURAM.

34. KRISHNENDU KUMAR P.K.,
PERUMTHEDATH, THEKKUMPURAM.

35. ANILKUMAR T.D.,
THAIPARAMBIL, -DO- -DO-.

36. SAJEEV P.G.
POTTASSERY, -DO- -DO-.

37. ANIL KUMAR K.R.,
KOLAMVEEDU, -DO- -DO-.

38. RAMACHADRAN P.K.,
PALLIPARAMBIL, KARIMPADAM -DO-.

39. ANANDAVALLY,
KATTIPARAMBIL -DO- -DO-.

40. SREEDEVI, SIVANANDAVILASAM,
DO. DO.

41. K.A.SAJAN,
KANNAMPARAMBIL -DO- -DO-.

42. K.A. SUDHEESH,
KOVATTU -DO-- -DO-.

43. SIVAN K.P., KALATHUNGAL -DO- -DO-.

44. MANI SEKHARAN,
CHILLIKKOTTATHIL, KARIMPADAM, CHENDAMANGALAM.

45. SURESH K.A.,
KAMBARUPARABIL, KARIMPADAM -DO- -DO-.

46. M.R. SUDHARSAN, MARAYIL -DO- -DO-.

47. K.P. PRADEEPKUMAR, KALISSERIL -DO--DO-.

48. SASI K.A., KOVATTU,
KARIMPADAM -DO- -DO-.

49. K.K. BINU, KANADI -DO- -DO-.

50. RAIJU K.A., -DO- -DO-.

51. SASI P.P., PANAKKAL -DO- -DO-.

52. AJESH P.R., PANIKKASSERY, -DO- -DO-.

53. T.S.BAIJU,
THARAYIL, KARIMPADAM -DO- -DO-.

54. HARISH, PAZHAYEDATH -DO- -DO-.

55. M.R. RAJEEV, MAKKAPPARAMBIL -DO- -DO-.

56. M.R.BIJU, -DO- -DO-.

57. PUSHKARAN K.V., KALATHUNGAL -DO- -DO-.

58. RETHNAMAN, KALATHUNGAL -DO--DO-.

59. VIPINDAS K.V.,
KANNAMPARAMBIL, -DO- -DO-.

60. SUSHAMA K.S.,
SUSADANAM, MANAKKODAM -DO- -DO-.

61. UDAYAN K.A.,
KOLLAMVEEDU, THEKKUMPURAM -DO- -DO-.

62. DEVADAS E.P.,
ELLIKULATH, KARIMPADAM -DO- -DO-.

63. K.K. JEEVAN, KOVATTU, -DO- -DO-.

64. SHARA JEEVAN,

KOVATTU, KARIMPADAM -DO- -DO-.

65. SATHYA P.K., ULLIKARA -DO- -DO-.

66. JAYAN, -DO- -DO-.

67. SHEELA P.D., THARAYIL -DO- -DO-.

68. AHUTHA UNNIKRISHNAN,
KANNIMPARAMBIL -DO- -DO-.

69. VALSALA SIVAN,
PANAKKAL, KARIMPADAM, CHENDAMANGALAM.

70. PAZHANI APPAN, THARAYIL, -DO- -DO-.

71. RAJENDRAN K., KAZHANJITHARA -DO- -DO-.

72. SHEENA O.K., OLIYATH -DO- -DO-.

73. BABY RAMAKRISHNAN, PANIKKASSERY -DO-DO-.

74. ANEESH RAMAKRISHNAN, -DO- -DO-.

75. ANJUSWHA RAVINDRAN, KOVATTU -DO- -DO-.

76. THAMPI K.P., KOLLAM VEEDU -DO- -DO-.

77. DHANYA K.S., KUNNUKATTIL -DO- -DO-.

78. CHANDRIKA SATHEESA, -DO- -DO-.

79. MINI PRASAD, KALISSERY -DO- -DO-.

80. VRINDA MURALEESHARAN,
PURATHUMURIYIL, -DO- -DO-.

81. JAIHIIND T.V., KATTIPARAMBIL -DO- -DO-.

82. SMITHA K.S., KALATHUNGAL -DO- -DO-.

83. ASHA K.S., -DO- -DO- -DO-.

84. BEETHA K.R., THARAYIL -DO- -DO-.

85. SAROJAM, KANADI, -DO- -DO-.

86. SUKU P.K., PANIKKASSERY -DO- -DO-.

87. SATHYAVRITHAN, KANNEYTH, -DO- -DO-.

88. BABY SATHYAVRITHAN, -DO- -DO- -DO-.

89. M.K. MANI, KUNNUKATTIL, -DO- -DO-.

90. DILEEPKUMAR, -DO- -DO- -DO-.

91. HARSHAN K.V., MOOTHEDATH -DO- -DO-.

92. BEENA T.V., EDAVANAVEEDU -DO- -DO-.

93. VIJAYAN A.S., APPACHATHU, -DO- -DO-.

94. SUNI K.B., KOLOTHUPARAMBIL -DO- -DO-.

95. SANI K.S. KALATHUNGAL, -DO- -DO-.

96. V.P. ANEESH VELLAPPILLY,
KARIMPADAM, CHENDAMANGALAM.

97. M.R. BABU, MAKKAPPARAMBIL, -DO- -DO-.

98. HARUN T.P., THAIKKOTTATHIL -DO- -DO-.

99. LATHA HARUN, -DO- -DO- -DO-.

100. BHASI V.G., VALAPPILLY -DO- -DO-.

101. MOHANAN K.A.,
KOLAMVEEDU, THEKKUMPURAM -DO- -DO-.

102. GIRIJA JOY, KOTTUNGAL, -DO- -DO-.

103. K.K. JOY, -DO- -DO-.

104. AISHA K.R., -DO- -DO-.

105. MURALEEDHARAN K.K.,KUNNUKATTIL -DO- -DO-

106. INDIRA K.S., CHAKKALAPPARAMBATH -DO--DO-

107. SURESH BABU, -DO- -DO-.

108. RADHAKRISHNAN, KALATHIPARAMBU -DO--DO-.

109. SANTHOSHKUMAR M.P.,
MANTHARAYIL, -DO- -DO-.

110. K.K.BIJU, KANADI -DO- -DO-.

111. NADHAN C.P., CHOOLAKKAL -DO- -DO-.

112. UNNIKRISHNAN, COLIYATH -DO- -DO-.

113. SUJATHA PRABHAKARAN,
KRISHNALAYAM, -DO- -DO-.

114. RENJITH K.P., KRISHNALAYAM -DO- -DO-.

115. LALJI K.P., -DO- -DO- -DO-.

116. LATHA T.R., KUNNUKATTIL -DO--DO-.

117. VENUGOPAL O.S.,
OLIYATH, KARIMPADAM -DO- -DO-.

118. SUMANGALA SASI,
KATTIPARAMBIL -DO- -DO-.

119. SANTHOSH C.R.,
CHERUKADATH, MANAKKODAM, -DO- -DO-.

120. PREMOTHKUMAR K.P.,
KALISSERY, MANAKKODAM, -DO- -DO-.

121. V.R. SIVAN,
VALLAPPILLY, MANAKKODAM, CHENDAMANGALAM.

122. MANI A.S., APPACHATHU, -DO -DO-.

123. SANTHI,
AJITHKUMAR, KATHANAPARAMBIL -DO- -DO-.

124. AJITHKUMAR B., -DO- -DO- -DO-.

125. BIJU B., -DO- -DO- -DO-.

126. SIJU B., -DO- -DO- -DO-.

127. K.R. HARI, MANIYANCHERY, -DO- -DO-.

128. K.S.BHUVANESWARY,
KANNAMPARAMBIL, KARIMPADAM, -DO-.

129. K.A. MURALI, -DO- -DO- -DO-.

130. ANIL M.C., MANIYASSERY, -DO -DO-.

131. SAJITHA AJAYAGHOSH, THARAYIL,-DO--DO-.

132. RENJAN T.S., -DO- -DO- -DO-.

133. SUGUNAN K.P. KUNNUKATTIL, -DO- -DO-.

134. VIJAYAN E.S., EZHEDATH, -DO- -DO-.

135. KUNJIRAMAN,
VADHYARUPARAMBIL, -DO- -DO-.

136. KRISHNAKUMAR K.S.,
KALATHUNGAL, -DO- -DO-.

137. SUDHEESHKUMAR E.G.,
EDAVANAVEEDU -DO- -DO-.

138. GOPALAKRISHNAN,
CHULLIKKATTUPARAMBIL, MANAKKODAM -DO-.

139. SUDHI, VALLAPPILLY, MANAKKODAM -DO-.

140. GLAINA GOPI, MATTAKAL, KARIMPADAM -DO-.

141. SURENDRAN R, RAMANKULATH -DO- -DO-.

142. BRIJESHLAL M.G., MUTHEDATH -DO- -DO-.

143. SELVARAJ K.V., KUNNUKATTIL, -DO- -DO-.

144. SENTHILKUMAR K.V., -DO- -DO- -DO-.

145. SUNILKUMAR M.V., MANTHRAYIL -DO- -DO-.

146. VASU, MUTHEDATH -DO- -DO-.

147. SUJATHA BABU,
KOVATTU, KRIMPADAM, CHENDAMANGALAM.

148. MURALI K.A. KUTHEDATH -DO- -DO-.

149. SOUDHAMINI SUMUGAN,
KALATHIPARAMBIL -DO- -DO-.

150. RAJU K.C., AMMANCHERY -DO- -DO-.

151. K.K. UNNIKRISHNAN, KARIPAYI -DO- -DO-.

152. SURESH K.K., KANNATHUSSERY -DO- -DO-.

153. T.S. JAYARAM,
THACHAPPILLY, MANAKKODAM -DO-.

154. SUNANDHA GOPALAKRISHNAN,
MARAYIL, KARIMPADAM -DO-.

155. LIJI M.P., MANAPURATH -DO- -DO-.

156. BINEESH P.S., PANIKKASSERY -DO- -DO-.

157. BIJEESH P.S., PANIKKASSERY -DO- -DO-.

158. USHA AJAYAN, -DO--DO- -DO-.

159. V.R. MOHANAN,
VALIYAPURAKKAL, MANAKKODAM, -DO-.

160. HARISH P.B., PUZHAYEDATH -DO- -DO-.

161. SUDHAN M.M., MAKKARUPARAMBIL -DO--DO-.

162. AMBIKA CHIDAMBARAN,

EDAYATHARA, -DO- -DO-.

163. SARASA SIVADASAN, -DO- -DO- -DO-.

164. MOHANAN K.S., KALATHIPRAMBIL -DO--DO-.

165. SINDHU K.S., KANNAMPARAMBIL -DO--DO-.

166. AJITHAKUMARI K.S., -DO- -DO- -DO-.

167. BRIJUMOL, THARAYIL, -DO- -DO-.

168. BIJU V.S.,
VENMANISSERY, THEKKUMPURAM, -DO-.

169. SHEEBA PRADEEP,
KANADI, KARIMPADAM -DO-.

170. RAJAPPAN, ODASSERY -DO- -DO-.

171. BHUMADI SIVASANKARAN,
KALATHUNGAL, -DO- -DO-.

172. AJAYAN P.K., PANIKKASSERY -DO- -DO-.

173. RAMESH V.R.,
VADAKKEDATH, KARIMPADAM, CHENDAMANGALAM.

174. JAGALSON O.S.,
ODASSERY, MANAKKEDAM -DO-.

175. SUSHOBHAN SUGADHAN, KOVATTU, -DO--DO-.

176. PRADEEP K.K.,KONOTHUPARAMBIL -DO-DO-.

177. ANIL K.S.,
KANNAMPARAMBIL, KARIPADAM, -DO-.

178. BIJU O.V., ODASSERY, -DO- -DO-.

179. SHAJI P.K.,PALLIPPARAMBIL, -DO- -DO-.

180. SAJEEV A.K., ANAMBALATH, -DO--DO-.

181. MOHANAN A.M.,AYIRAMMELIL, -DO- -DO-.

182. ANANDAN, MATTAPPILLY, -DO- -DO-.

183. HARIHARAN M.B., MATTAKKAL -DO- -DO-.

184. SHINE C.V., CHIRAKKADAVIL -DO- -DO-.

185. UNNIKRISHNAN T.K.,
THOPPILPARAMBIL -DO- -DO-.

186. RENJANI UNNIKRISHNAN,
RAMASSERY -DO -DO-.

187. BIJU N.S., NEELIMATHARA -DO- -DO-.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR
SRI.VARUGHESE M EASO
SRI.VIVEK VARGHESE P.J.
SMT.PRAISHEEL PRAKASAM
SRI.K.B.ARUN
SRI.A.JAYASANKAR
SRI.MANU GOVIND

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 22/08/2007 THE COURT ON THE SAME DAY DELIVERED THE THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 280 OF 2006

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Dated this the 22nd day of August, 2007

J U D G M E N T

This FAO arises from an order passed by the learned Additional District Judge, North Parur by which the learned Judge had set aside the decree and judgment passed by the trial court dismissing the suit and directed the trial court to return the plaint.

2. Plaintiffs filed O.S. No.360 of 2000 for a declaration that plaintiffs 2 and 3 are the President and Secretary of the Dharmartha Dayini Sabha (DD Sabha), Karimpadam, Chennamangalam Village, elected as per the bye-law and also for consequential injunction. Trial court held that plaintiffs 2 and 3 failed to prove that they are the duly elected persons as per the provisions of the bye-law and dismissed the suit. Challenging the decree and judgment, plaintiffs filed A.S. No.286 of 206 before the District Court, North Paur. When the matter came up for hearing, the lower appellate court found that the first plaintiff is a Society registered under the provisions of Travancore Cochin Literary, Scientific and

Charitable Societies Registration Act, 1955 (for short "the Registration Act"). Learned District Judge went through various provisions of the bye-law and held that Munsiff's Court North Parur has no jurisdiction to entertain a suit of this nature as it will come within the purview of Section 92 of the Code of Civil Procedure. In view of that finding, learned District Judge set aside the decree and judgment passed by the trial court and directed the trial court to return the plaint. Challenging that judgment, this appeal is filed. The appeal was admitted on the substantial questions of law framed in the appeal memorandum. The appeal was heard on the questions of law framed.

3. Exhibit A1 is the bye-law of the first plaintiff Sabha. Clause (2) of the said bye-law reads as follows:

4. So the first plaintiff Sabha is a Society registered under the provisions of the Registration Act. A suit filed by a Society registered under Act 12 of 1955 will not come within

the purview of Section 92 CPC. It is to be noted that Section 25 of Act 12 of the Act deals with contingencies which are akin or similar to the provisions contained in Section 92 CPC.

5. Section 25 of the Registration Act reads as follows:

> "25. Application to court for dissolution, framing a scheme, etc:- (1) When an application is made by the State Government or ten percent of the members on the rolls of a society to the District Court within the jurisdiction of which the Society is registered, the court may, after enquiry and on being satisfied that it is just and equitable, pass any of the following orders:-
>
> (a) removing the existing governing body and appointing a fresh governing body; or
>
> (b) framing a scheme for the better and efficient management of the society; or
>
> (c) dissolving the society.
>
> (2) Where the application under sub-section (1) is by the members of the society, the applicant shall deposit in court along with the application the sum of one hundred rupees in cash as security for costs".

6. According to the plaintiffs the Sabha will not come

within the mischief of Section 25 of Act 12 of the Registration Act. So the court having jurisdiction to entertain the suit is the Munsiff's Court, North Parur because that is the lowest Forum. So the finding of the learned District Judge that this is a matter which falls within Section 92 CPC is unsustainable and liable to be set aside. The lower appellate Court shall hear the appeal and dispose of the same on its merits in accordance with law.

7. Learned counsel appearing for the appellants submitted that on an earlier occasion two of the defendants in the suit filed I.A. No.176 of 2001 for conducting an election which was rejected. It is submitted that challenging that order they filed C.R.P. No.1361 of 2001 before this Court. This Court by order dated 23.7.2003 directed the trial court to conduct election by appointing a Commissioner. It is prayed that a direction may be issued to the lower appellate court to comply with the directions of this Court in the CRP. It is open to the appellants to bring these facts also to the notice of the lower appellate court and seek appropriate orders.

8. In the result, the appeal is allowed. The judgment

passed by the lower appellate court on 9.11.2006 setting aside the decree and judgment passed by the trial court and directing the trial court to return the plaint is hereby set aside. The lower appellate court is directed to take A.S. No.286 of 2006 back to file and dispose of the same in accordance with law, after hearing both sides.

9. Parties shall appear before the court below on 28.9.2007.

I.A. No.4478 of 2006 shall stand closed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 280 OF 2006

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J U D G M E N T

22ND AUGUST, 2007